

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20557

PR Docket No. 92-209

In the Matter of

Amendment of Part 90 of the
Commission's Rules to Expand
Coordination of the 800 MHz
General Category Channels.

RM-7965

NOTICE OF PROPOSED RULE MAKING

Adopted: September 9, 1992;

Released: October 6, 1992

Comment Date: November 27, 1992

Reply Comment Date: December 14, 1992

By the Commission:

I. INTRODUCTION

1. In response to a petition for rule making filed on February 4, 1992, by the Special Industrial Radio Service Association, Inc. (SIRSA), we propose to provide applicants for conventional¹ Specialized Mobile Radio (SMR)² systems licensed on General Category frequencies the option of seeking frequency coordination from any of the three recognized frequency coordinators. These coordinators are the National Association of Business and Educational Radio, Inc. (NABER), the Associated Public-Safety Communications Officers (APCO), and SIRSA.

¹ Conventional systems are authorized in all private land mobile frequency bands. A conventional system usually has a single channel (a frequency or frequency pair), but may be authorized up to five channels above 800 MHz. 47 C.F.R. § 90.623(a). A conventional system user consciously chooses the channel on which to transmit and manually selects that channel. On the other hand, trunked systems are currently authorized only on frequencies above 800 MHz and usually employ five or more channels. A trunked system user who wants to transmit is automatically routed by a computer to the first available channel or, if no channel is available, is placed on a waiting line to be served in turn. See Report and Order in PR Docket No. 87-213, 5 FCC Rcd 4016, paras. 2 and 3 (1990).

² SMR operators are entrepreneurs who offer communications services on a commercial basis to private radio eligibles. The SMR service was created to encourage a competitive private land mobile market, as well as to promote the use of trunking technology. See Second Report and Order in Docket No. 18262, 46 FCC 2d 752 (1974)(subsequent history omitted).

³ See Report and Order in PR Docket No. 83-737, 103 FCC 2d

II. BACKGROUND

2. As part of our proceeding to establish new frequency coordination mechanisms, in 1986 we certified SIRSA, NABER and APCO as the frequency coordinators for the 150 conventional 800 MHz frequencies.³ Previously, in 1983, we recognized NABER as the sole coordinator for conventional SMR base stations on these 150 conventional channels.⁴

3. In 1990, we made these 150 channels, which until then had been set aside exclusively for conventional use, available to all eligible users for conventional or trunked use as "General Category" channels.⁵ In addition, however, we summarily indicated that applicants for conventional SMR systems in the General Category must continue to obtain coordination from NABER.⁶ We also decided that SMR licensees seeking to add conventional General Category channels to existing trunked systems or to create trunked SMR systems by consolidating conventional systems would be allowed to seek a frequency coordination from any of the three recognized coordinators.⁷

III. DISCUSSION

4. We agree with petitioner that there is no apparent justification for the distinction in coordination procedures between conventional and trunked SMR systems licensed on General Category channels. Additionally, we are concerned that applicants requesting General Category channels for conventional SMR operations may be at a competitive disadvantage to applicants seeking these same channels for expansion or consolidation of trunked SMR systems because the SMR applicant for a conventional system does not have the ability to choose the coordination service that best meets its requirements. Moreover, there is no apparent benefit to be gained by separate treatment of applicants based on type of system employed or proposed. NABER, APCO and SIRSA all currently maintain complete up-to-date data bases for General Category channels, and, therefore, all possess the capability to coordinate applications for conventional SMRs. In view of the foregoing, we propose to permit applicants for conventional SMR systems on General Category frequencies to obtain service from any of the three recognized coordinators.⁸

1093 (1986).

⁴ See Public Notice, Designation of Frequency Coordinator for 150 Original 800 MHz Conventional Channels, Mimeo No. 3950, May 3, 1983.

⁵ See Report and Order in PR Docket No. 87-213, 5 FCC Rcd 4016, para. 17 (1990), in which the Commission adopted rule changes to increase the number of frequencies available for trunked technology in the 800 MHz frequency band. This channel redesignation permitted both the expansion of existing trunked systems and the creation of new trunked systems by combining existing conventional systems.

⁶ *Id.* at para. 57 and note 75.

⁷ *Id.* at para. 57.

⁸ In instances where we permit multiple coordinators to provide frequency recommendations for the same frequencies, questions may arise as to which applicant gets priority for a particular channel. We intend to continue our current practice that gives priority to the application first filed with the Private Radio Bureau's Licensing Division. See 47 C.F.R. § 0.481.

Regulatory Flexibility Act

5. An Initial Regulatory Flexibility Analysis is contained in Appendix B to this *Notice of Proposed Rule Making*. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 *et seq.* (1981).

Ex Parte Rules - Non-Restricted Proceeding

6. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. §§1.1202, 1.1203, and 1.1206(a).

Comment Dates

7. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§1.415 and 1.419, interested parties may file comments on or before **November 27, 1992**, and reply comments on or before **December 14, 1992**. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

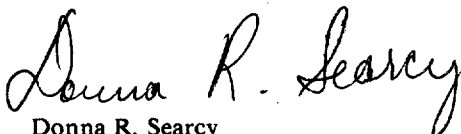
Ordering Clause

8. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i), 301, 303(g), 303(i), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 301, 303(g), 303(i), 303(r), and 332(a).

Contact Person

9. For further information concerning this proceeding, contact Freda Lippert Thyden, Private Radio Bureau, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION



Donna R. Searcy
Secretary

APPENDIX A

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat., 1066, 1082; as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.615 is amended by adding a new last sentence to paragraph (a) to read as follows:

§ 90.615 Frequencies available in the General Category.

(a) * * * Applications submitted by eligibles under § 90.603(c) must be coordinated (see § 90.175) by any one of the frequency coordinators certified to coordinate applications above 800 MHz.

* * * * *

APPENDIX B**INITIAL REGULATORY FLEXIBILITY ANALYSIS****Reason for Action**

We are initiating this rule making proceeding to obtain comment on whether applicants for conventional SMR systems in the General Category must continue to be restricted to the services of only one frequency coordinator or whether they should be allowed to choose from any of the three recognized certified coordinators for this group of channels.

Objectives

The purpose of this rule making is to conform our regulatory treatment of conventional SMR applicants seeking a recommendation for an 800 MHz General Category frequency to that presently afforded trunked applicants also seeking a recommendation of General Category frequencies. Specifically, under the proposed rule, applicants for General Category conventional SMR systems would be able to choose frequency coordination services from any of the three certified coordinators.

Legal Basis

The proposed action is authorized under Sections 4(i), 301, 303(g), 303(i), 303(r), and 332(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 301, 303(g), 303(i), 303(r) and 332(a).

Reporting, Recordkeeping and Other Compliance Requirements

No new requirements will be imposed upon licensees in the private land mobile services.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

This action would be beneficial to applicants for 800 MHz conventional SMR systems from the General Category because it would provide these applicants with an opportunity to choose among the three recognized coordinators for a frequency recommendation. Thus, applicants would select the coordinator that best serves their coordination needs.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objective

The impact of this proposed rule on small entities seeking licenses for conventional SMR operations in the General Category of frequencies appears to be favorable. The most obvious alternative -- to decline to adopt this rule change -- would result in the continued requirement that SMR applicants for 800 MHz conventional systems in the General Category be required to obtain service from only one coordinator although applicants for trunked SMR systems in this same category may select from any of the three certified coordinators.